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OFFICE OF PETITIONS

In re Application :
Ramachandran, et al. :
Application No. 09/815,454 : PATENT TERM ADJUSTMENT
Filed: March 22, 2001 :
Dkt. No.: 6647-20 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed August 22, 2007.

The application for patent term adjustment (PTA) under 37 CFR 1.705(b) is **DISMISSED IN PART and HELD IN ABEYANCE IN PART**.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b), mailed May 24, 2007, indicated a patent term adjustment (PTA) to date of 1,051 days. The instant application for PTA was timely filed August 22, 2007, at the time of submission of the issue fee payment.

The correct PTA at the time of the allowance is 1,051 days, as indicated on the Determination of Patent Term Adjustment mailed May 24, 2007.

Applicants herein do not dispute the patent term adjustment (PTA) accorded to date (1,052 days).

Applicants dispute the reduction of one day in connection with the response after non-final action received December 9, 2004. Applicants argue that the response to the non-final Office action mailed September 8, 2004 bore a certificate of mailing date of December 8, 2004 in accordance with 37 CFR 1.8.

Applicants' arguments have been carefully considered, but are not persuasive. The date indicated on any certificate of mailing or transmission under § 1.8 is not taken into account in the calculation of patent term adjustment. *See*, 37 CFR 1.703(f). Further, in accordance with 37 CFR 1.8, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the

procedure described at 37 CFR 1.8 is followed. The actual date of receipt will be used for all other purposes, such as the calculation of patent term adjustment.

In view thereof, the adjustment of 1,052 days is properly reduced one day, the reduction commencing December 9, 2004, the day after the date that is three months after the date that the non-final Office action was mailed, and ending December 9, 2004, the date that the response after non-final rejection was received.

The instant application for patent term adjustment also requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date of the application. A decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within three years. *See*, 37 CFR 1.703(b).

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Applicants are reminded that if an application is entitled to an adjustment under 35 USC 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 USC 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 USC 154(b)(1)(B) in determining whether periods of delay overlap under 35 USC 154(b)(2)(A).

Thus, any days of delay for Office issuance of the patent more than three years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. *See*, 35 USC 154(b)(1)(B), 35 USC 154(b)(2)(A), and 37 CFR § 1.703(f). *See, also, Revision of*

Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004).

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

The Office acknowledges receipt of the required application fee of $200.00. No additional fee will be required if applicants are solely requesting reconsideration of additional time related to failing to issue the patent within three years in accordance with 37 CFR 1.702(b).

This application is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Day : Friday
Date: 3/28/2008

PALM INTRANET

Time: 16:55:48

PTA Calculations for Application: 09/815454			
Application Filing Date:	03/22/2001	PTO Delay (PTO):	1052
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	1
Post-Issue Petitions:	0	Total PTA (days):	1051
PTO Delay Adjustment:	0		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
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65	03/28/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		1	
58	05/24/2007	MAIL NOTICE OF ALLOWANCE			
57	05/23/2007	ISSUE REVISION COMPLETED			
56	05/23/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
55	05/23/2007	CASE DOCKETED TO EXAMINER IN GAU			
54	05/15/2007	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
53	05/14/2007	DOCUMENT VERIFICATION			
52	05/13/2007	NOTICE OF ALLOWABILITY			
51	03/31/2007	DATE FORWARDED TO EXAMINER			
50	03/27/2007	RESPONSE AFTER NON-FINAL ACTION			
49	02/26/2007	MAIL NON-FINAL REJECTION			
48	02/23/2007	NON-FINAL REJECTION			
47	02/15/2007	DATE FORWARDED TO EXAMINER			
46	02/08/2007	AMENDMENT AFTER FINAL REJECTION			
45	01/08/2007	MISCELLANEOUS INCOMING LETTER			
44	01/10/2007	MAIL FINAL REJECTION (PTOL - 326)			
43	01/08/2007	FINAL REJECTION			
42	09/20/2005	MISCELLANEOUS INCOMING LETTER			
41	11/04/2006	DATE FORWARDED TO EXAMINER			
40	11/01/2006	RESPONSE AFTER NON-FINAL ACTION			
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38	09/18/2006	NON-FINAL REJECTION			
37	07/12/2006	DATE FORWARDED TO EXAMINER			
36	07/06/2006	RESPONSE AFTER NON-FINAL ACTION			

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34	06/06/2006	NON-FINAL REJECTION			
33	04/28/2006	CORRESPONDENCE ADDRESS CHANGE			
32	04/28/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
31	04/10/2006	DATE FORWARDED TO EXAMINER			
30	04/11/2006	MAIL APPEALS CONF. REOPEN PROSEC.			
29	04/07/2006	PRE-APPEALS CONFERENCE DECISION - REOPEN PROSECUTION			
28	09/20/2005	REQUEST FOR PRE-APPEAL CONFERENCE FILED			
27	09/20/2005	NOTICE OF APPEAL FILED			
26	09/20/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
25	09/28/2005	MAIL ADVISORY ACTION (PTOL - 303)			
24	09/26/2005	ADVISORY ACTION (PTOL-303)			
23	07/31/2005	DATE FORWARDED TO EXAMINER			
22	07/21/2005	AMENDMENT AFTER FINAL REJECTION			
21	07/21/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
20	04/21/2005	MAIL FINAL REJECTION (PTOL - 326)	12		17
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13	09/07/2004	NON-FINAL REJECTION			
12	08/13/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
11	08/11/2004	CASE DOCKETED TO EXAMINER IN GAU			
10	12/18/2003	CASE DOCKETED TO EXAMINER IN GAU			
9	08/12/2003	CASE DOCKETED TO EXAMINER IN GAU			
8	02/19/2002	CASE DOCKETED TO EXAMINER IN GAU			
7	08/29/2001	APPLICATION DISPATCHED FROM OIPE			
6	05/16/2001	APPLICATION IS NOW COMPLETE			
5	05/16/2001	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			

4	05/15/2001	CORRESPONDENCE ADDRESS CHANGE			
3	05/15/2001	CORRESPONDENCE ADDRESS CHANGE			
2	04/16/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/22/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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